

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1216 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAMOD SOMESHWAR JOSHI

Versus

TRUSTEES OF DIGAMBAR MANDIR- HIRALAL NATHUBHAI CHOKSHI

Appearance:

MR BR PARIKH for Petitioner

MR VJ DESAI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/03/2000

ORAL JUDGEMENT

#. Present Revision Application is filed by the original tenant against whom decree for possession has been passed in Regular Civil Suit No.35 of 1981 which was confirmed in appeal by the Appellate Court.

#. It is the case of the plaintiffs that they are the trustees of Neminath Swami Jain Digambar Mandir Trust and plaintiff no.1 is the managing trustee of the said Trust. The suit property described in detail in para 2 of the plaint was let out to the grand father of the present defendants by contractual tenancy. After the expiry of contractual tenancy the grand father of the defendants became statutory tenants of the suit property. According to the plaintiffs at the time of filing of the suit, defendant no.1 was using the suit property and was in use and occupation of the same. The deceased father of the defendants was the tenant occupying the suit premises after the death of grand father of the defendants. According to the plaintiffs, defendants are in arrears of rent to the tune of Rs. 497/- in all. That therefore, the suit notice was served upon him asking them to pay arrears of rent but they neither paid the rent nor handed over possession. Therefore, the present suit was filed for getting possession as well as arrears of rent.

#. The defendants appeared in the suit and filed written statement at exh.14. According to the defendants their deceased father had sent a cheque of Rs. 108/- to the plaintiff no.1 on 24.8.1973 towards the arrears of rent which the plaintiff no.1 had accepted. It is also the case of the defendants that though the defendant no.1 has paid the arrears of rent in cash to the plaintiff no.1, no rent receipts were given. It was therefore, prayed that the suit is required to be dismissed.

#. The Trial Court framed various issues at exh.15. The Trial Court after recording the evidence and hearing the arguments of both the sides came to the conclusion that the plaintiffs have succeeded in proving their case of non payment of rent by the defendants. It was also found that the defendants have not paid the rent within one month from the date of receipt of the suit notice and therefore, the defendants-tenants are required to be evicted under section 12(3)(a) of the Bombay Rent Act. Accordingly the Trial Court passed a decree for possession against the defendants tenants.

#. It was found by the Trial Court that there is nothing on record to show that the defendants have sent the arrears of rent by MO or that they have paid any amount of rent in cash or that they have deposited any amount in the court.

#. The defendant no.1 therefore, carried the matter further by filing Regular Civil Appeal No. 19 of 1984 in

the Court of the learned District Judge at Bharuch. The learned Extra Assistant Judge, Bharuch who heard the appeal dismissed the same by his order dated 27.3.80. The above mentioned decree of the Appellate Court is challenged by the defendant no.1 by filing the present Revision Application.

#. At the time of hearing of this Revision Application Mr. B.R.Parikh learned advocate for the petitioner submitted that the rent is not payable by month as it was to be paid at the end of the year and therefore, no decree for possession could have been passed against the defendants-tenants under section 12(3)(a) of the Bombay Rent Act. As against the same Mr. V.J.Desai the learned advocate for the respondents-plaintiffs submitted that originally the rent was collected on yearly basis. But after the period of original rent note came to an end, the defendants continued to occupy the premises on the basis of payment of monthly rent and from that date the defendants were required to pay rent at the rate of Rs.6/- p.m. Since the defendants tenants had not paid the rent, a notice under section 12(2) of the Bombay Rent Act was served on the defendants-tenants demanding the accumulated rent of 11 months and even in the notice the plaintiffs demanded rent for the last 10 years at the rate of Rs. 6/- p.m. and the plaintiffs calculated the rent for the period of 11 months and 29 days. It is therefore, the case of the landlords that the defendants-tenants had not paid the rent even for the last 10 years when the suit notice was given to them. In that view of the matter it cannot be said that the defendants-tenants were ready and willing to pay the arrears of rent or that the defendants-tenants were not negligent in payment of the rent. It is not in dispute that if the demand notice is to be taken into account, the defendant-tenants were admittedly in arrears of rent for more than 6 months and therefore, the landlords were justified in approaching the court for getting a decree for possession on the ground of arrears of rent. However, the landlords have even in the plaint clearly stated that the rent was required to be paid on monthly basis and though initially rent was collected on the basis of one year's rent, subsequently it was agreed by the defendants-tenants to pay the rent every month at the rate of Rs. 6/- . Assuming that the rent was not payable by month then the case would fall under section 12(3)(b) of the Bombay Rent Act but even in order to get protection of the said section, it is necessary that the tenant must deposit the rent regularly every month in the court and also clear up the arrears on the first date . As a matter of fact no dispute of standard rent has been

raised within one month from the date of receipt of the suit notice and therefore, the tenant was required to deposit the rent regularly in the court and pay up the arrears even on the first date of hearing. It has been found by the courts below that the tenants have not paid the rent regularly nor have cleared up the arrears of rent even on the first date of hearing. In fact as per the observations of the Trial Court on finding given on issue no.2 it clearly shows that the tenant has not paid any rent in the court at all. In view of that even if it is believed that the rent is not payable by month and that the case would fall under section 12(3)(b) of the Bombay Rent Act, then also since there is no regular deposit as observed by the Trial Court, the petitioner cannot get any protection under section 12(3)(b) of the Bombay Rent Act. It is pertinent to note that the defendants have not even entered the witness box to give explanation about the non payment of arrears of rent. It has been found by the Appellate Court on page 8 of its judgment that the Trial Court had given many dates to the tenants but they did not remain present and challenge the evidence of the landlord which was given on oath. The tenants have not produced any documentary evidence before the Trial Court and at the belated stage an application was given for allowing them to produce additional written statement. But the Trial Court had rejected that application. In that view of the matter on appreciation of evidence on record, the courts below have found that the tenants were in arrears of rent and they have not paid the arrears of rent within one month from the receipt of the suit notice and that they were also negligent in payment of rent regularly every month in the court. In that view of the matter a decree under section 12(3)(b) was required to be passed against them. As per the decision reported in 19 GLR page 502 during the pendency of the proceedings i.e. the suit and the appeal, the rent is required to be paid every month. Since the tenant has not complied with the same it cannot be said that there is any error of law which can be said to have been committed either by the Trial Court by the Appellate Court. I therefore, do not find any substance in this Revision Application and the same therefore, requires to be dismissed. Accordingly the Revision Application is dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

#. At this stage Mr. Parikh states that the petitioner-tenant may be granted some time to find out suitable alternative accommodation. In the facts and circumstances I direct that the decree for possession may

not be executed till 31.3.2001 on condition that the petitioner-tenant shall file a usual undertaking before this court within 8 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit property to any one and without obstructing in any manner he will hand over the vacant and peaceful possession to the respondents-landlords on or before 31.3.2001. The petitioner shall continue to pay the mesne profit regularly during the aforesaid period. If the petitioner fails to file the undertaking within 8 weeks from today or if the petitioner commits any breach of the said undertaking it will be open for the landlords to execute the decree for possession forth with.

(P.B.Majmudar.J)

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